

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NATIONAL RAILROAD PASSENGER
CORPORATION,

14-CV-7510 (JSR)

Plaintiff,

- vs. -

ARCH SPECIALTY INSURANCE COMPANY;
ASPEN SPECIALTY INSURANCE COMPANY;
COMMONWEALTH INSURANCE COMPANY;
FEDERAL INSURANCE COMPANY;
LEXINGTON INSURANCE COMPANY;
LIBERTY MUTUAL FIRE INSURANCE COMPANY;
CERTAIN UNDERWRITERS AT LLOYD'S OF
LONDON and CERTAIN LONDON MARKET
INSURANCE COMPANIES subscribing to Policy Nos.
507/N11NA0820, 507/N11NA08241, 507/N11NA08242,
507/N11NA08244, 507/N11NA08244, 507/N11NA08245
and GEP2944; MAIDEN SPECIALTY INSURANCE
COMPANY; MAXUM INDEMNITY COMPANY;
NAVIGATORS INSURANCE COMPANY;
PARTNER REINSURANCE EUROPE plc;
RSUI INDEMNITY COMPANY;
STEADFAST INSURANCE COMPANY;
TORUS SPECIALTY INSURANCE COMPANY; and
WESTPORT INSURANCE CORPORATION,

Defendants.

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BRUCE R. KALINER, an attorney admitted to practice in the Southern District of New York, declares the following under penalty of perjury:

1. I am a member of the law firm Mound Cotton Wollan & Greengrass, counsel for Defendants Commonwealth Insurance Company, Lexington Insurance Company, Maiden Specialty Insurance Company, Steadfast Insurance Company, and International Insurance

**DECLARATION OF
BRUCE R. KALINER
IN SUPPORT OF INSURERS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT

(REPLACEMENT OF
BENCHWALLS/TRACK BEDS)**

FILED UNDER SEAL PER NOVEMBER 29, 2014 PROTECTIVE ORDER

Company of Hannover SE, several of the Defendants in this action (collectively, along with all other Defendants, “Insurers”). I am familiar with the proceedings in this matter and submit this declaration in support of Insurers’ Motion for Partial Summary Judgment denying Plaintiff’s claim that its benchwalls and track beds, which were allegedly damaged by Sandy floodwater, need to be replaced in their entirety, *i.e.*, from “portal to portal.”

2. Pursuant to paragraph 9 of the Protective Order, which was so-ordered by the Court on November 29, 2014, documents that have been designated as “Confidential Discovery Materials” by one of the parties to this lawsuit are to be filed under seal with the court (ECF 54).

3. The documents attached to this Declaration have been designated by Amtrak as “Confidential” and are therefore being filed under seal with the Court at this time.

4. Attached as Exhibit 3 is a true and correct copy of relevant portions of the December 30, 2014 deposition transcript of Cathy Rawlings.

5. Attached as Exhibit 4 is a true and correct copy of relevant portions of a ICF Kaiser Report Deliverable D3 - Base Condition Report Final (March 1998).

6. Attached as Exhibit 5 is a true and correct copy of an October 15, 2013 e-mail from Glenn Sullivan, Amtrak’s Director of Facilities and corporate representative on engineering issues, to James Richter, Amtrak’s Deputy Chief Engineer of Structures.

7. Attached as Exhibit 6 is a true and correct copy of an October 15, 2013 e-mail (with attachments) from James Richter to Bruce Pohlot, Amtrak’s Chief Engineer.

8. Attached as Exhibit 7 is a true and correct copy of relevant portions of the January 14, 2015 and January 23, 2015 deposition transcripts of Glenn Sullivan.

9. Attached as Exhibit 8 is a true and correct copy of a January 12, 2015 report of Michael Thomas of C&CS Atlantic, Inc., submitted on behalf of Amtrak, entitled: "Impact of Superstorm Sandy on the Condition of the Concrete in the Amtrak River Tunnels in New York City."

10. Attached as Exhibit 10 is a true and correct copy of January 21, 2014 schedules prepared by Continental Machinery Company, Amtrak's consultant/expert.

11. Attached as Exhibit 12 is a true and correct copy of a July 24, 2014 e-mail from John Kovacs of HNTB to Raymond Sandiford and Nasri Munfah of HNTB, and attachments.

12. Attached as Exhibit 13 is a true and correct copy of an October 3, 2013 report entitled "Ballast Test Results from East River and North River Tunnels" prepared by Amtrak personnel.

13. Attached as Exhibit 14 is a true and correct copy of an undated (November 2013) handwritten note by Cathy Rawlings, Amtrak's Director of Risk Management and the Chairwoman of Amtrak's Sandy Team.

14. Attached as Exhibit 15 is a true and correct copy of relevant portions of the February 5, 2015 deposition transcript of Nasri Munfah.

15. Attached as Exhibit 16 is a true and correct copy of relevant portions of the January 8, 2015 deposition transcript of Richard Bernaski.

Dated: New York, New York
March 9, 2015



BRUCE R. KALINER

EXHIBIT 3

FILED UNDER SEAL

EXHIBIT 4

FILED UNDER SEAL

EXHIBIT 5

FILED UNDER SEAL

EXHIBIT 6

FILED UNDER SEAL

EXHIBIT 7

FILED UNDER SEAL

EXHIBIT 8

FILED UNDER SEAL

EXHIBIT 10

FILED UNDER SEAL

EXHIBIT 12

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EXHIBIT 13

FILED UNDER SEAL

EXHIBIT 14

FILED UNDER SEAL

EXHIBIT 15

FILED UNDER SEAL

EXHIBIT 16

FILED UNDER SEAL